

Senate, March 23, 1998. The Committee on Energy and Technology reported through SEN. PETERS, 20th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT REVISING CERTAIN STATUTES IN TITLE 16.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 16-8a of the general statutes, as
2 amended by section 1 of public act 97-60, is
3 repealed and the following is substituted in lieu
4 thereof:

5 (a) No public service company, as defined in
6 section 16-1, holding company, as defined in
7 section 16-47, or Nuclear Regulatory Commission
8 licensee operating a nuclear power generating
9 facility in this state, or person, firm,
10 corporation, contractor or subcontractor directly
11 or indirectly providing goods or services to such
12 public service company, holding company or
13 licensee, may take or threaten to take any
14 retaliatory action against an employee for his
15 disclosure of any matter involving the substantial
16 misfeasance, malfeasance or nonfeasance in the
17 management of such public service company, holding
18 company or licensee or the disclosure of
19 information pursuant to section 31-51m, AS
20 AMENDED. Any employee found to have knowingly made
21 a false disclosure shall be subject to
22 disciplinary action by his employer, up to and
23 including dismissal.

24 (b) Any employee of such a public service
25 company, holding company or licensee, or of any
26 person, firm, corporation, contractor or
27 subcontractor directly or indirectly providing
28 goods or services to such a public service
29 company, holding company or licensee, having
30 knowledge of any of the following may transmit all
31 facts and information in his possession to the
32 Department of Public Utility Control: (1) Any
33 matter involving substantial misfeasance,
34 malfeasance or nonfeasance in the management of
35 such public service company, holding company or
36 licensee; or (2) any matter involving retaliatory
37 action or the threat of retaliatory action taken
38 against an employee who has reported the
39 misfeasance, malfeasance or nonfeasance, in the
40 management of such public service company, holding
41 company or licensee. With regard to any matter
42 described in subdivision (1) of this subsection,
43 the department shall investigate such matter in
44 accordance with the provisions of section 16-8, AS
45 AMENDED, and shall not disclose the identity of
46 such employee without his consent unless it
47 determines that such disclosure is unavoidable
48 during the course of the investigation. With
49 regard to any matter described in subdivision (2)
50 of this subsection, the matter shall be handled in
51 accordance with the procedures set forth in
52 subsections (c) and (d) of this section.

53 (c) (1) Not more than thirty business days
54 after receipt of a written complaint, in a form
55 prescribed by the department, by an employee
56 alleging his employer has retaliated against an
57 employee in violation of subsection (a) of this
58 section, and not more than thirty business days
59 after the effective date of [this act] PUBLIC ACT
60 97-60, for any such pending written complaint
61 which the department received before said date,
62 the department shall make a preliminary finding in
63 accordance with [subdivision (3) of] this
64 subsection. [The department shall make its
65 findings based on sworn affidavits and verified
66 documents, without a public hearing.]

67 (2) Not more than five business days after
68 receiving a written complaint, in a form
69 prescribed by the department, the department shall
70 notify the employer by certified mail. Such
71 notification shall include a [copy of the

72 complaint or a description of the allegations made
73 in the complaint in sufficient detail to allow the
74 employer the opportunity to respond] DESCRIPTION
75 OF THE NATURE OF THE CHARGES AND THE SUBSTANCE OF
76 ANY RELEVANT SUPPORTING EVIDENCE, along with a
77 notice that [the department must receive any
78 response from the employer not more than five
79 business days after the employer receives such
80 notification. The department shall consider any
81 response it has timely received from the employer
82 in making its preliminary finding. Any filing] (A)
83 THE EMPLOYER MAY SUBMIT A WRITTEN RESPONSE AND
84 PRESENT REBUTTAL STATEMENTS IN THE FORM OF
85 AFFIDAVITS FROM WITNESSES AND SUPPORTING DOCUMENTS
86 AND MAY MEET WITH THE DEPARTMENT TO RESPOND
87 VERBALLY TO THE EMPLOYEE'S CHARGES, AND (B) THE
88 DEPARTMENT SHALL CONSIDER IN MAKING ITS
89 PRELIMINARY FINDING AS PROVIDED IN SUBDIVISION (3)
90 OF THIS SUBSECTION ANY SUCH WRITTEN AND VERBAL
91 RESPONSES, INCLUDING AFFIDAVITS AND SUPPORTING
92 DOCUMENTS, RECEIVED BY THE DEPARTMENT NOT MORE
93 THAN TWENTY BUSINESS DAYS AFTER THE EMPLOYER
94 RECEIVES SUCH NOTICE. ANY SUCH RESPONSE received
95 after [five] TWENTY business days shall be
96 considered by the department only upon a showing
97 of good cause and at the discretion of the
98 department. THE DEPARTMENT SHALL MAKE ITS
99 PRELIMINARY FINDING AS PROVIDED IN SUBDIVISION (3)
100 OF THIS SUBSECTION BASED ON THE INFORMATION
101 DESCRIBED IN SUBPARAGRAPH (A) OF THIS SUBDIVISION,
102 WITHOUT A PUBLIC HEARING.

103 (3) There shall be a rebuttable presumption
104 that an employee was retaliated against in
105 violation of subsection (a) of this section if the
106 department finds that: (A) The employee had
107 reported substantial misfeasance, malfeasance or
108 nonfeasance in the management of the public
109 service company, holding company or licensee; (B)
110 the employee was subsequently discharged,
111 suspended, demoted or otherwise penalized by
112 having his status of employment changed by his
113 employer; and (C) the [employee's report was not
114 knowingly false] EMPLOYEE WAS PENALIZED AS A
115 RESULT OF THE EMPLOYEE'S REPORT.

116 (4) If such findings are made, the department
117 shall issue an order requiring the employer to
118 immediately return the employee to the employee's

119 previous position of employment or an equivalent
120 position.

121 (d) After making a preliminary finding in
122 accordance with the provisions of subsection (c)
123 of this section, the department shall conduct a
124 full investigatory proceeding in accordance with
125 the provisions of section 16-8, AS AMENDED, at
126 which time the employer shall have the opportunity
127 to rebut the presumption. The Department of Public
128 Utility Control may issue orders or impose civil
129 penalties in a manner that conforms with the
130 notice and hearing provisions in section 16-41
131 against a public service company, holding company
132 or licensee or a person, firm, corporation,
133 contractor or subcontractor directly or indirectly
134 providing goods or services to such public service
135 company, holding company or licensee, in order to
136 enforce the provisions of this section.

137 (e) If an employee or former employee of such
138 a public service company, holding company or
139 licensee, or of a person, firm, corporation,
140 contractor or subcontractor directly or indirectly
141 providing goods or services to such a public
142 service company, holding company or licensee,
143 having knowledge of any matter involving the
144 substantial misfeasance, malfeasance or
145 nonfeasance in the management of such public
146 service company, holding company or licensee,
147 enters into an agreement with his employer that
148 contains a provision directly or indirectly
149 discouraging the employee from presenting a
150 written complaint or testimony concerning such
151 misfeasance, malfeasance or nonfeasance in any
152 legislative, administrative or judicial
153 proceeding, such provision shall be void as
154 against public policy.

155 (f) The Department of Public Utility Control
156 shall adopt regulations, in accordance with
157 chapter 54, to carry out the provisions of this
158 section. Such regulations shall include the
159 following: (1) The procedures by which a complaint
160 may be brought pursuant to subsection (a) of this
161 section; (2) the time period in which such a
162 complaint may be brought; (3) the time period by
163 which the department shall render a decision
164 pursuant to subsection (d) of this section; (4)
165 the form on which written complaints shall be
166 submitted to the department by an employee

167 pursuant to subsection (c) of this section; and
168 (5) the requirement that a notice be posted in the
169 workplace informing all employees of any public
170 service company, holding company and licensee and
171 of any person, firm, corporation, contractor or
172 subcontractor directly or indirectly providing
173 goods or services to a company or licensee, as
174 defined in subsection (b) of this section, of
175 their rights under this section, including the
176 right to be reinstated in accordance with
177 subsection (c) of this section.

178 STATEMENT OF LEGISLATIVE COMMISSIONERS: The new
179 language in section (c)(2) was rearranged for
180 clarity and accuracy and "FIFTEEN BUSINESS DAYS"
181 was changed to "TWENTY BUSINESS DAYS" for internal
182 consistency.

183 ET COMMITTEE VOTE: YEA 16 NAY 0 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sSB 497

STATE IMPACT	See Explanation Below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Public Utility Control

EXPLANATION OF ESTIMATES:

Passage of this bill will change the procedures the Department of Public Utility Control (DPUC) must follow and the standards it must use in conducting its preliminary investigation of a whistle-blowing complaint from a utility company employee. Such changes will result in no fiscal impact to the DPUC.

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OLR BILL ANALYSIS

sSB 497

AN ACT REVISING CERTAIN STATUTES IN TITLE 16

SUMMARY: This bill changes the procedures the Department of Public Utility Control (DPUC) must follow and the standards it must use in conducting its preliminary investigation of a whistle-blowing complaint from a utility employee. It also gives the employer more time to respond to the complaint.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Whistleblower Complaints

By law, DPUC must notify the employer of a complaint from an employee within five business days of receiving it. Under current law, the notice must include a copy of the complaint or a description of the charges in enough detail to allow the employer to respond. The bill instead requires that the notice describe the nature of the charges and the substance of any relevant supporting evidence. The bill increases the time the employer has to respond from five to 20 business days. By law, DPUC can consider responses that it receives after the deadline if the employer shows good cause.

The bill also requires the notice to state that:

1. the employer can submit a written response and present rebuttal statements in the form of affidavits and supporting documents,
2. the employer can meet with the DPUC to respond verbally to the employee's charges, and
3. the DPUC must consider written and verbal responses received within 20 days in making its preliminary findings.

The law prohibits utility industry employers from retaliating against employees who report misconduct. Current law establishes a rebuttable presumption that retaliation has taken place if: (1) the employee reported misconduct, (2) he was subsequently fired or otherwise penalized, and (3) his report was not knowingly false. The bill changes the last condition to that the penalty was the result of the employee's report. It requires DPUC to make its preliminary finding as to whether retaliation has occurred based on the employer's verbal, as well as written, responses to the complaint.

By law, if DPUC finds as a result of this initial investigation that the employer retaliated against the employee, the employer must return the employee to his previous position or a comparable one. DPUC then conducts a full investigation and can subsequently issue orders and impose a civil penalty.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute
Yea 16 Nay 0